

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
C.W.H. Broadcasting, Inc.)	File No. EB-01-OR-133
Licensee of WHNY(AM))	NAL/Acct. No. 200232620001
McComb, Mississippi)	FRN: 0006-3820-48

FORFEITURE ORDER

Adopted: March 11, 2002

Released: March 13, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand five hundred dollars (\$3,500) to C.W.H. Broadcasting, Inc. (“C.W.H. Broadcasting”), licensee of Station WHNY(AM), for willfully violating Sections 17.4(a)(2), 17.51(a), and 73.49 of the Commission’s Rules (“Rules”).¹ The noted violations involve C.W.H. Broadcasting’s failures to register WHNY(AM)’s three antenna structures; exhibit red obstruction lighting on those antenna structures; and enclose one of those antenna structures within an effective locked fence or other enclosure.

2. On October 24, 2001, the District Director of the Commission’s New Orleans, Louisiana Field Office issued a \$20,000 *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to C.W.H. Broadcasting.² On November 21, 2001, C.W.H. Broadcasting filed a response to the *NAL*. We assess a \$3,500 forfeiture based on C.W.H. Broadcasting’s demonstrated inability to pay the originally proposed amount.

II. BACKGROUND

3. This *NAL* arose from a complaint that WHNY(AM)’s antenna structures were not lit. Following the complaint, an agent from the New Orleans Field Office reviewed WHNY(AM)’s license and determined that its antenna structures were subject to the painting, lighting, and registration requirements of Part 17 of the Rules. The agent’s search of the FCC’s antenna structure registration database revealed that C.W.H. Broadcasting had not registered the antenna structures as required. On March 16, 2001, agents from the New Orleans Field Office visited WHNY(AM) and saw that the gate to the fence enclosing the “south” antenna structure

¹ 47 C.F.R. §§ 17.4(a)(2), 17.51(a), 73.49.

² *C.W.H. Broadcasting, Inc.*, NAL/Acct. No. 200232620001 (Enf. Bur., New Orleans Office, rel. Oct. 24, 2001). This *NAL* was first issued NAL/Acct. No. “200132620006,” which the District Director subsequently corrected to its present NAL/Acct. No. of “200232620001.”

was unlocked and standing open. Additionally, three days later, on March 19, 2001, after the sun had set, an agent saw that none of WHNY(AM)'s antenna structures had operating lights.

4. On March 20, 2001, an agent met with WHNY(AM)'s owner and discussed the violations at issue here. Subsequently, on March 29, 2001, the agent issued a *Notice of Violation* ("NOV") to C.W.H. Broadcasting, which included the violations noted in the subject *NAL*. C.W.H. Broadcasting responded on April 24, 2001, asserting, among other things, that it was acting to obtain antenna structure registration numbers and to fix the light outages. C.W.H. Broadcasting also stated that it had purchased a new lock and had locked the fence around the "south" antenna structure. In a *Continuation of NOV* that the agent issued on April 26, 2001, he asked C.W.H. Broadcasting to provide him with copies of its antenna structure registration applications (and copies of registrations once obtained) and to notify him when C.W.H. Broadcasting fixed its light outages. C.W.H. Broadcasting did not respond to the *Continuation of NOV*. Subsequently, on October 24, 2001, the District Director of the New Orleans Field Office issued the subject *NAL*.

III. DISCUSSION

5. In its response to the *NAL*, C.W.H. Broadcasting does not contest any of the violations cited in the *NAL*. Instead, C.W.H. Broadcasting asks us to cancel the proposed \$20,000 forfeiture based on its purported 50-year history of overall compliance with the Rules and its alleged inability to pay that amount. To support the latter point, C.W.H. Broadcasting supplies us with copies of its U.S. income tax returns for the years 1998-2000. Providing additional context, C.W.H. Broadcasting tells us that it assumed that its contract engineer and small office staff would keep WHNY(AM) in compliance with the Rules, and was disappointed to learn that it had misplaced its reliance in them. According to C.W.H. Broadcasting, the death of a WHNY(AM) general manager in July of 2000 further exacerbated WHNY(AM)'s compliance status. C.W.H. Broadcasting states that it did not hire a replacement general manager until March of 2001. Despite its staffing issues, C.W.H. Broadcasting mentions that it took "immediate corrective measures" to address the outstanding violations.

6. C.W.H. Broadcasting states that the same person has owned WHNY(AM) for the last 50 years. During that time, the owner does not recall receiving "citations for technical violations of any type." Our search of FCC records reveals that the station has been cited for technical violations on at least two previous occasions. Specifically, on February 13, 1981, the New Orleans Field Office issued a *NOV* to WHNY(AM) for four technical violations of the Rules. Approximately ten years later, on April 24, 1991, the New Orleans Field Office issued a *NAL* to WHNY(AM) for three technical violations of the Rules, two of which related to the painting and lighting of WHNY(AM)'s towers. Thus, we find that the record does not support C.W.H. Broadcasting's claim that it has not been the subject of FCC enforcement action for technical violations in the past 50 years. Accordingly, we find that CWH Broadcasting's compliance record does not provide a basis to reduce the proposed forfeiture.

7. Although other factors can be considered, the best indication of a company's ability to pay a forfeiture is its gross receipts.³ After reviewing C.W.H. Broadcasting's financial information, we find evidence that would support a financial hardship-based reduction of the \$20,000 proposed forfeiture amount to \$3,500.

³ See *PJB Communications*, 7 FCC Rcd 2088, 2089 (1992).

8. With respect to WHNY(AM)'s staffing issues, we cite to the FCC's long-held position that licensees are responsible for their agents' acts and omissions.⁴ Turning to WHNY(AM)'s claim of remedial action, we cite to another well-established FCC position: remedial action, although commendable, will not nullify a forfeiture penalty.⁵

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ and Sections 0.111, 0.311, and 1.80(f)(4) of the Rules,⁷ C.W.H. Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,500 for willfully violating Sections 17.4(a)(2), 17.51(a), and 73.49 of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80⁸ of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁹ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note "NAL/Acct. No. 200232620001" and "FRN: 0006-3820-48" referenced above. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by certified mail, return receipt requested, to M. Scott Johnson, Esq., Gardner, Carton & Douglas, 1301 K Street, N.W., Suite 900, East Tower, Washington, D.C. 20005 and to C.W.H. Broadcasting, Inc., P.O. Box 1223, McComb, Mississippi 39648.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁴ See *Liability of Sundial Broadcasting Corp.*, 30 FCC 2d 949 (1971).

⁵ See *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

⁸ 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 504(a).

¹⁰ See 47 C.F.R. § 1.1914.